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Nuremberg, Vietnam

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Perhaps one of the most articulate statements on the American point of view has come from a man with other problems at the moment, Senator Thomas J. Dodd, who before his career in Congress served as executive trial counsel at the German trials.

After explaining that those put on trial were accused of actual war

crimes, the Democratic Senator points out that, "No member of the German armed forces of any rank was prosecuted because he had served as a member of those forces or because he obeyed orders of a clearly military nature. . . ."

Senator Dodd adds: "No Luftwaffe pilot or commander, for example, was brought to trial because of his participation in the bombing of London."

Those who were prosecuted were accused of one of three types of crimes: Crimes against peace; war crimes, which involve the murder or ill-treatment of civilians or war prisoners; or crimes against humanity, which included the extermination, enslavement, deportation or other inhuman acts committed against any civilian population, before or during the war.

Mr. Bryson adds another key point: any trial conducted during the war would be outside international legality.

Captured American airmen have been executed before during wartime. The Japanese tied three of the men who were part of the famous Doolittle raid on Tokyo to crosses and shot them in 1942, and during 1945 a number of captured fliers were executed in Germany under an order from Hitler.

After the war, those responsible for the deaths were put on trial at Nuremberg and Tokyo, and punished, some by execution.

There remain many who do not accept the premise on which the postwar trials were conducted, and consider them illegal.

Whatever basis in law they may have had, the trials clearly do not provide North Vietnam with the legal right to try our fliers as war criminals. To do that, they must depend on their own brand of justice, which they have demonstrated before in the Vietnam conflict.

In the days following the conflict of World War II, the war crime trials in Nuremberg produced a storm of controversy throughout the world over their legality.

Now, two decades later, the issue has returned to haunt the United States; and this time the lives at stake are those of American airmen shot down over North Vietnam.

President Johnson's contention that our fliers are not war criminals is supported by many of the men who took part in the prosecution at Nuremberg, and others who were active in war crime trials in Japan.

The North Vietnamese argue that the United States is carrying on a war in violation of the 1954 Geneva agreements on Indochina, as they also cite the Nuremberg Charter. Article 6 of the Nuremberg Charter states that "crimes against peace" include "waging a war of aggression, or a war in violation of international treaties, agreements or assurances."

Lawyers who were involved in the Nuremberg trials consider this merely a propaganda ploy.

"Under the terms set down by the postwar trials, our men are clearly prisoners-of-war," says James B. Donovan, the New York attorney responsible for the spy-swap which brought C.I.A. pilot Gary Powers back to this country.

"I don't see how there is any valid comparison between the Nuremberg trial and the sort of thing North Vietnam is suggesting," is the view of Smith W. Brookhardt, now a Washington attorney.

Brady O. Bryson, a Philadelphia lawyer who, like Mr. Donovan and Mr. Brookhardt, was on the prosecution staff at Nuremberg, feels the Vietnamese "are attempting to alter the definition of just what is a war crime."

He says: "Our men were engaged in legitimate combat activity."

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